

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

§9.553 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(2) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(3) Applicant--A Texas resident seeking services in the TxHmL Program.

(4) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(5) Calendar day--Any day, including weekends and holidays.

(6) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) CFC--Community First Choice.

(8) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(9) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(10) CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(11) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

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(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(12) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.

(14) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(15) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

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(16) Condition of a serious nature--~~A [Except as provided in paragraph (24) of this section, a]~~ condition in which a program provider's noncompliance with a certification principle results in:

(A) actual or potential for serious physical, emotional, or financial harm to an individual;
or

(B) actual minor physical, emotional, or financial harm to an individual.

~~[caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.]~~

(17) Contract--A provisional contract or a standard contract.

(18) Critical incident--An event listed in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html>.

(19) Critical violation--A violation that DADS determines results in:

(A) actual or potential for death or serious physical, emotional, or financial harm to an individual; or

(B) actual minor physical, emotional, or financial harm to an individual.

(20) [(49)] DADS--The Department of Aging and Disability Services.

(21) [(20)] DFPS--The Department of Family and Protective Services.

(22) [(24)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(23) [(22)] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(24) [(23)] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(25) [(24)] Good cause--As used in §9.578 of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

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(26) ~~[(25)]~~ Hazard to health or safety--A condition in which ~~[serious injury or]~~ death or serious physical harm of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(27) ~~[(26)]~~ HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(28) ~~[(27)]~~ Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(29) ~~[(28)]~~ HHSC--Health and Human Services Commission.

~~[(29) ICAP--Inventory for Client and Agency Planning.]~~

(30) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(31) ICAP--Inventory for Client and Agency Planning.

(32) ~~[(31)]~~ ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(33) ~~[(32)]~~ ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(34) ~~[(33)]~~ ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(35) ~~[(34)]~~ Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

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(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(36) [~~(35)~~] Individual--A person enrolled in the TxHmL Program.

(37) [~~(36)~~] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(38) [~~(37)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(39) [~~(38)~~] IPC cost--Estimated annual cost of program services included on an IPC.

(40) [~~(39)~~] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

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(41) Isolated--One of the following:

(A) if there is harm or potential harm resulting from a citation, isolated means that one or a very limited number of individuals are affected; or

(B) if there is no harm and no potential for harm resulting from a citation, isolated means a situation that has occurred only occasionally.

(42) [(40)] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(43) [(41)] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(44) [(42)] LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(45) [(43)] LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(46) [(44)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(47) [(45)] Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(48) [(46)] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(49) [(47)] Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

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(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(50) ~~[(48)]~~ Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(51) ~~[(49)]~~ Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(52) ~~(50)~~ Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(53) Non-critical violation--A violation that DADS determines results in:

(A) potential for minor physical, emotional, or financial harm to an individual; or

(B) no harm to an individual.

(54) ~~(51)~~ Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(55) ~~[(52)]~~ Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

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(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(56) Pattern--One of the following:

(A) if there is harm or potential harm resulting from a citation, pattern means that more than a very limited number of individuals are affected but is not pervasive; or

(B) if there is no harm and no potential for harm resulting from a citation, pattern means a situation that has occurred more than occasionally but is not pervasive.

(57) [(53)] PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(58) [(54)] Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(59) Pervasive--One of the following:

(A) if there is harm or potential harm resulting from a citation, pervasive means that a substantial number of individuals are affected; or

(B) if there is no harm and no potential for harm resulting from a citation, pervasive means a situation that has occurred frequently.

(60) [(55)] Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

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(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(61) [~~(56)~~] Pre-move site review--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(62) [~~(57)~~] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA.

(63) [~~(58)~~] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(64) [~~(59)~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(65) [~~(60)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

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- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(66) [(61)] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(67) [(62)] Responder--A person designated to respond to an alarm call activated by an individual.

(68) [(63)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(69) [(64)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(70) Serious emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury, that warranted or would reasonably be expected to have warranted treatment by a physician or a licensed mental health professional.

(71) Serious financial harm--Loss of wages, money, property, or resources in a total amount of twenty dollars or more per individual for a period beginning the date of the review exit conference of the previous review to the date of the review exit conference of the current review.

(72) Serious physical harm--Severe physical injury, illness, pain, or impairment of physical condition, including:

(A) a fracture, dislocation of any joint, an internal injury, a contusion larger than two and one half inches, a concussion, a second- or third-degree burn, or a laceration requiring sutures;

(B) a severe adverse health effect that results or could result from failure to receive medications in the amounts or at the times prescribed; or

(C) any other harm that warranted, or would reasonably be expected to have warranted, hospitalization or medical treatment by a physician or nurse practitioner.

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(73) [~~(65)~~] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(74) [~~(66)~~] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(75) [~~(67)~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(76) [~~(68)~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

- (i) an applicant or individual and LAR;
- (ii) service coordinator; and
- (iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

- (i) the applicant and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) providers of specialized services;
- (v) a nursing facility staff person who is familiar with the applicant's needs;
- (vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and
- (vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

- (i) the individual and LAR;

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(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(77) [~~(69)~~] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(78) [~~(70)~~] Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(79) [~~(71)~~] Staff member--An employee or contractor of a TxHmL Program provider.

(80) [~~(72)~~] Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(81) [~~(73)~~] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(82) [~~(74)~~] System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(83) [~~(75)~~] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(84) [~~(76)~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(85) [~~(77)~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(86) [~~(78)~~] Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the

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TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(87) [(79)] Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(88) [(80)] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(89) [(81)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(90) Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.

9.555 Description of TxHmL Program Services

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides:

(A) habilitative or support activities that:

(i) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(ii) assist an individual to develop competencies in maintaining the individual's home life;

(iii) foster improvement of or facilitate an individual's ability and opportunity to:

(I) participate in typical community activities including activities that lead to successful employment;

(II) access and use of services and resources available to all citizens in the individual's community;

(III) interact with members of the community;

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(IV) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(V) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network;

(B) transportation; and or

(C) assistance in obtaining transportation.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services are provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

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(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services are provided:

- (A) respite;
- (B) community support;
- (C) employment assistance with the individual present;
- (D) supported employment with the individual present; or
- (E) CFC PAS/HAB.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

- (1) administering medication;
- (2) monitoring an individual's use of medications;
- (3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;
- (4) assisting an individual or LAR to secure emergency medical services for the individual;
- (5) making referrals for appropriate medical services;
- (6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;
- (7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

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(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;

(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

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(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:

(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment, or CFC PAS/HAB is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, employment assistance, or CFC PAS/HAB is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the TxHmL Program Billing Guidelines.

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(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

- (A) lifts;
- (B) mobility aids;
- (C) positioning devices;
- (D) control switches/pneumatic switches and devices;
- (E) environmental control units;
- (F) medically necessary supplies;
- (G) communication aids;
- (H) adapted/modified equipment for activities of daily living; and
- (I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of \$10,000 per individual per IPC year.

(3) Adaptive aids do not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of \$7,500 per individual. After the \$7,500 lifetime limit has been reached, an individual is eligible for an additional \$300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

- (A) purchase and repair of mobility/wheelchair ramps;
- (B) modifications to bathroom facilities;

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of \$1,000 per individual per IPC year for the following treatments:

(1) emergency dental treatment;

(2) preventive dental treatment;

(3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the relief of an unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports.

(1) Respite includes:

(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(o) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

- (1) audiology services;
- (2) speech/language pathology services;
- (3) occupational therapy services;
- (4) physical therapy services;
- (5) dietary services; and
- ~~[(6) social work services; and]~~
- (6) ~~[(7)]~~ behavioral support.

(l) FMS are provided if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

§9.575 Program Provider's Right to Administrative Hearing

A program provider may request an administrative hearing in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and 1 ~~[H]~~ TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) if DADS takes or proposes to take the following action:

- (1) vendor hold;
- (2) contract termination;
- (3) imposition of an administrative penalty;
- (4) ~~[(3)]~~ recoupment of payments made to the program provider; or
- (5) ~~[(4)]~~ denial of a program provider's request for payment.

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

§9.576 DADS Surveys [Review] of a Program Provider

(a) A ~~[The]~~ program provider must be in continuous compliance with the certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions).

(b) To ~~[DADS conducts an on-site certification review of the program provider, at least annually, to]~~ evaluate evidence of a ~~[the]~~ program provider's compliance with the certification principles, at a minimum ~~[-Based on its review]~~, DADS conducts:

(1) an initial certification survey within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive TxHmL Program services from a program provider with a provisional contract; and

(2) an annual certification survey of each program provider.

~~[takes action as described in §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).]~~

~~[(e) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive TxHmL Program services from the provider under the provisional contract.]~~

(c) ~~[(d)]~~ If DADS certifies a program provider after completion of an initial or annual certification survey ~~[review]~~, the certification period is for no more than 365 calendar days.

(d) If, after the initial certification survey, a program provider does not provide a TxHmL Program or CFC service during a certification period, DADS does not conduct an annual certification survey unless the program provider provides a TxHmL Program or CFC service before the end of the certification period.

(e) DADS may also conduct a survey of a ~~[reviews of the]~~ program provider at any time during a certification period.

(f) During any survey ~~[review]~~, DADS may review the TxHmL Program services or CFC services provided to any individual to determine if a ~~[the]~~ program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all surveys ~~[on-site reviews]~~, at a time and location determined by DADS, and at the conference gives the program provider a written preliminary survey ~~[review]~~ report.

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(h) If a program provider disagrees with any of the findings in a preliminary survey ~~[review]~~ report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary survey ~~[review]~~ report, the program provider must:

(A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(i) Within 10 business days after the date of the survey exit conference, DADS sends to a program provider:

(1) a final survey report; and

(2) if DADS imposes an administrative penalty in accordance with §9.581 of this subchapter (relating to Administrative Penalties), a written notice of the administrative penalty.

(j) ~~[(3)]~~ If DADS receives a timely request for an informal review of any of the findings in the preliminary survey report, DADS, within 15 business days after receipt of the request:

(1) ~~[(A)]~~ notifies the program provider in writing of the results of the informal review ~~[within 10 calendar days of receipt of the request]~~; and

(2) ~~[(B)]~~ based on the results of the informal review, sends the program provider:

(A) if necessary, a revised final survey ~~[review]~~ report; and

(B) if necessary, a revised written notice of an administrative penalty ~~[within 21 calendar days after the date of the review exit conference]~~.

~~[(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

(k) Based on a survey, DADS takes action as described in §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).

§9.577 Program Provider Compliance and Corrective Action

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(a) As a result of a survey described in §9.576 of this subchapter (relating to DADS Surveys of a Program Provider), DADS takes action against a program provider as [a result of a review as] described in this section.

(b) If DADS determines after an initial or annual [a] certification survey [review] described in §9.576(b) of this subchapter [~~(relating to DADS Review of a Program Provider)~~], that a program provider is in compliance with the [a]] certification principles, DADS:

(1) gives the program provider a written survey report at the exit conference stating that the program provider is in compliance with the certification principles; and

(2) certifies the program provider as described in §9.576(c) [§9.576(d)] of this subchapter and requires no action by the program provider [is required].

~~[(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:]~~

~~[(1) at the time of the certification review, the program provider is not providing TxHmL Program services or CFC services to any individuals; and]~~

~~[(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services or CFC services to an individual for at least 60 consecutive calendar days:]~~

~~[(c) [(d)] If [Except as provided in subsections (j) — (l) of this section, if] DADS determines based on a survey [from a review] that a program provider is not in compliance with [provider's failure to comply with one or more of] the certification principles; [is not of a serious nature,]~~

(1) DADS gives the program provider a written preliminary survey report described in §9.576(g) of this subchapter at the exit conference that contains:

(A) a list of the violations; and

(B) a statement of whether a violation is a condition of a serious nature; and

(2) [requires] the program provider must, within 10 business days after the date of the survey exit conference, [to] submit [a corrective action plan] to DADS for approval a plan of correction for the violations in the preliminary survey report, using DADS Plan of Correction form [within 14 calendar days after the date of DADS final review report].

(d) If DADS determines based on the preliminary survey report that a program provider's failure to comply with one or more of the certification principles constitutes a critical violation, DADS:

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(1) imposes an administrative penalty in accordance with §9.581 of this subchapter (relating to Administrative Penalties); and

(2) notifies the program provider of the administrative penalty in accordance with §9.576(i) of this subchapter.

(e) A program provider's [The corrective action] plan of correction required by subsection (c)(2) ~~[(4)]~~ of this section must specify a date by which corrective action will be completed for each violation, and such date must:

(1) for a violation that is a condition of a serious nature, as stated in the preliminary survey report, be no later than (30) [90] calendar days after the date of the survey [review] exit conference; and

(2) for a violation, that is not a condition of a serious nature, be no later than 45 calendar days after the date of the survey exit conference.

(f) Within 10 business [14-calendar] days after the date DADS receives the ~~[corrective action]~~ plan of correction required by subsection (c)(2) ~~[(4)]~~ of this section, DADS notifies the program provider of whether the plan is approved or not approved.

(1) If DADS approves the plan of correction, the program provider must complete the corrective action in accordance with the plan of correction. [:]

(2) If DADS does not approve the plan of correction, the program provider must submit a revised plan of correction within 10 calendar days after the date of DADS written notice that the plan of correction was not approved.

~~[(1) DADS certifies the program provider; and]~~

~~[(2) the program provider must complete corrective action in accordance with the corrective action plan.]~~

(g) Within 10 business days after the date DADS receives the revised plan of correction required by subsection (f)(2) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the revised plan of correction the program provider must complete the corrective action in accordance with the revised plan of correction.

(h) [(g)] If the program provider does not submit a [corrective action] plan of correction as required by subsection (c)(2) or (f)(2) [(4)] of this section, or DADS notifies the program provider that the revised plan of correction required by subsection (f)(2) of this section is not approved, DADS may:

~~[(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;]~~

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(1) ~~[(2)]~~ impose a vendor hold against the program provider until the program provider submits a ~~[corrective action]~~ plan of correction approved by DADS; or

(2) ~~[(3)]~~ deny or terminate certification of the program provider.

(i) DADS may take one or more of the following actions to determine if the program provider has completed its corrective action in accordance with an approved plan of correction:

(1) request the program provider to submit written evidence of correction to DADS; or

(2) conduct a survey or an on-site visit:

(A) for a violation that is a condition of a serious nature that is determined by DADS to be a critical violation, no sooner than 31 calendar days after the survey exit conference; and

(B) for a violation that is not a condition of a serious nature that is determined by DADS to be a non-critical violation, no sooner than 46 calendar days after the survey exit conference.

(j) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(A) of this section that the program provider has completed the corrective action on a critical violation, the administrative penalty imposed in accordance with subsection (d)(1) of this section stops accruing for the critical violation on the date corrective action was completed, as determined by DADS.

(k) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(A) of this section that the program provider has not completed the corrective action on a critical violation, DADS takes action in accordance with this subsection.

(1) If DADS determines at the end of a survey that the program provider has not completed the corrective action on a critical violation, DADS takes one of the following actions:

(A) continues the administrative penalty and conducts another survey or on-site visit to determine if the program provider completed the corrective action;

(B) imposes a vendor hold against the program provider; or

(C) denies or terminates certification of the program provider.

(2) If from a survey or on-site visit described in paragraph (1)(A) of this subsection, DADS determines that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by DADS.

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(3) If from a survey described in paragraph (1)(A) of this subsection, DADS determines that the program provider has not completed the corrective action, the administrative penalty stops accruing and DADS:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(l) A program provider may request that, during a survey or on-site visit described in subsection (i)(2)(A) of this section, DADS determine if the program provider has completed some or all of the corrective action on non-critical violations in accordance with the corrective action plan approved by DADS.

(1) If DADS determines that the program provider has completed some or all of the corrective action on non-critical violations, DADS incorporates the findings into the preliminary survey report from the survey described in subsection (i)(2)(A) of this section.

(2) If DADS determines that the program provider has not completed all of the corrective action on non-critical violations, the program provider must complete any remaining corrective action in accordance with the plan of correction approved by DADS.

(m) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(B) of this section that the program provider has completed the corrective action in accordance with the plan of correction and corrected all non-critical and critical violations, DADS will certify the program provider.

(n) If DADS determines at the end of a survey described in subsection (i)(2)(B) of this section that the program provider has not completed the corrective action on non-critical violations, DADS takes action in accordance with this subsection.

(1) If DADS determines at the end of a survey that the program provider has not completed the corrective action on non-critical violations, DADS:

(A) imposes an administrative penalty in accordance with §9.581 of this subchapter;

(B) notifies the program provider of the administrative penalty in accordance with §9.576(i) of this subchapter; and

(C) except as provided in paragraph (2) of this subsection, conducts a survey or onsite visit no earlier than 30 calendar days after the date of the exit conference of the survey described in subsection (i)(2)(B) of this section.

(2) DADS may conduct a survey or onsite visit earlier than 30 calendar days after the exit conference of the survey or visit described in subsection (i)(2)(B) of this section if the program provider has submitted evidence of corrective action to DADS during the 30 day period.

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(3) If from the survey or on-site visit described in paragraph (1)(C) or (2) of this subsection, DADS determines that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by DADS.

(4) If from the survey described in paragraph (1)(C) or (2) of this subsection, DADS determines that the program provider has not completed the corrective action, DADS takes one of the following actions:

(A) continues the administrative penalty and conducts another survey or on-site visit to determine whether the program provider completed the corrective action;

(B) imposes a vendor hold against the program provider; or

(C) denies or terminates certification of the program provider.

(o) If the survey described in subsection (c) of this section is an annual certification survey, DADS does not certify the program provider until DADS determines that the program provider is in compliance with the certification principles.

~~[(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.]~~

~~[(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:]~~

~~[(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and]~~

~~[(2) conducts a follow up review after the 30 day period to determine if the program provider completed the corrective action.]~~

(p) [(j)] If DADS determines from a survey [review] that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the survey [review]. If the program provider does not remove the hazard by the end of the survey [review], DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the LIDDAs the immediate provision of alternative services for the individuals.

(q) [(k)] If DADS determines from a survey [review] that a program provider committed any of the actions described in §9.581(a)(2) of this subchapter [has falsified documentation used to demonstrate compliance with this subchapter], DADS takes one of the following actions [may]:

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(1) imposes an administrative penalty against the program provider as described in §9.581 of this subchapter;

(2) ~~[(4)]~~ imposes ~~[impose]~~ a vendor hold against the program provider; or

(3) ~~[(2)]~~ denies or terminates ~~[deny or terminate]~~ certification of the program provider.

~~[(1) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:]~~

~~[(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;]~~

~~[(2) imposes or continues a vendor hold against the program provider; or]~~

~~[(3) denies or terminates certification of the program provider.]~~

~~(r) ~~[(m)]~~ If DADS imposes a vendor hold in accordance with this section:~~

~~(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or~~

~~(2) for a program provider with a standard contract, DADS conducts a survey no earlier than 30 calendar days after the effective date of the vendor hold ~~[follow-up review]~~ to determine if the program provider completed the corrective action required to release the vendor hold; and~~

~~(A) if the program provider completed the corrective action, DADS releases the vendor hold; or~~

~~(B) if the program provider has not completed the corrective action, DADS denies or terminates certification ~~[takes action as described in subsection (1) of this section]~~.~~

~~(s) ~~[(n)]~~ If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support or CFC PAS/HAB who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.~~

§9.579 Certification Principles: Qualified Personnel

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service or a CFC service if that service provider:

(1) is qualified to provide the service;

(2) unless the program provider agrees to pay a higher amount, provides the service at or below:

(A) for any service except CFC ERS, the direct services portion of the applicable TxHmL Program rate; and

(B) for CFC ERS, the reimbursement rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must:

(1) conduct initial and periodic training that ensures:

(A) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

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- (1) conflicts of interest between program provider personnel and an individual;
- (2) financial impropriety toward an individual;
- (3) abuse, neglect, or exploitation of an individual; and
- (4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

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(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

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(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service provider of behavioral support:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);

(D) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;

(E) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(F) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or

(G) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; and

(2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:

(A) before providing behavioral support services;

(B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and

(C) within three years after the most recent date of completion.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

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(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453; and

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701. ~~[;and]~~

~~[(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.]~~

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

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(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.581. Administrative Penalties.

(a) DADS may impose and collect an administrative penalty against a TxHmL program provider for:

(1) a violation of a certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions); and

(2) any of the following actions:

(A) making a false statement of a material fact the program provider knows or should know is false with respect to a matter under investigation by DADS;

(B) falsifying documentation; or

(C) willfully interfering with the work of a representative of DADS or the enforcement of this subchapter.

(b) To determine the range of an administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section, DADS considers:

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(1) the seriousness of the violation; and

(2) the frequency of the violation.

(c) DADS determines the seriousness of a violation described in subsection (a)(1) of this section as one of the following:

(1) actual or potential for death or serious physical, emotional or financial harm;

(2) actual minor physical, emotional, or financial harm; or

(3) potential for minor physical, emotional, or financial harm or no harm.

(d) DADS determines the frequency of a violation described in subsection (a)(1) of this section as one of the following:

(1) isolated;

(2) pattern; or

(3) pervasive.

(e) The range of the administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section is set forth in the following table:

<u>Seriousness of a Violation</u>	<u>Frequency of a Violation</u>		
	<u>Isolated</u>	<u>Pattern</u>	<u>Pervasive</u>
<u>Actual or potential for death or serious physical, emotional or financial harm</u>	<u>\$500-3000</u>	<u>\$1000-4000</u>	<u>\$1500-5000</u>
<u>Actual minor physical, emotional, or financial harm</u>	<u>\$100-1000</u>	<u>\$100-2500</u>	<u>\$100-3500</u>
<u>Potential for minor physical, emotional, or financial harm or no harm</u>	<u>\$50-\$200</u>	<u>\$50-350</u>	<u>\$50-500</u>

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(f) DADS considers the following factors in determining the amount of an administrative penalty within the established range for a violation described in subsection (a)(1) of this section:

(1) the threat or degree of harm to the health or safety of individuals resulting from the violation;

(2) the program provider's history of violations within the previous 24 months;

(3) whether the program provider:

(A) had prior knowledge of the violation, including whether the program provider identified the violation through the program provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(g) If DADS determines that the seriousness of a violation described in subsection (a)(1) of this section is potential for minor physical, emotional, or financial harm or no harm, DADS allows the program provider an opportunity to correct the violation, in accordance with §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(h) For a violation described in subsection (a)(1) of this section, a program provider commits a separate violation each day the program provider continues to violate the certification principle.

(i) For an administrative penalty imposed for an action described in subsection (a)(2) of this section, DADS imposes the penalty no more than once per survey or investigation. DADS does not allow a program provider an opportunity to correct the action before imposing an administrative penalty. The amount of the administrative penalty for each action is as follows:

(1) \$1000 for making a false statement of a material fact the program provider knows or should know is false with respect to a matter under investigation by DADS;

(2) \$1000 for falsifying documentation; and

(3) \$1000 for willfully interfering with the work of a representative of DADS or the enforcement of this subchapter.

(j) If DADS imposes an administrative penalty against a program provider for a violation or action described in subsection (a)(1) or (2) of this section, DADS does not, at the same time, impose a vendor hold or otherwise withhold contract payments from the program provider for the same violation or action.

16R13 TxHmL draft amendments to §§9.553, 9.555, 9.575, 9.576, 9.577, 9.579 and new §9.581 for administrative penalties.

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